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March 15, 2012

The Honorable John Walsh
Chairman
Michigan House of Representatives
House Judiciary Committee
P.O. Box 30014
Lansing, MI 48909

RE: SENATE BILL 557 (S-2) – REVOCATION OF PATERNITY ACT

Dear Chairman Walsh and distinguished committee members:

The National Family Justice Association, a national non-profit educational organization on behalf of children and their families, wishes to submit both oral and written testimony before the Michigan House Judiciary Committee in support of Senate Bill 557 (S-2). In addition, we are recommending this committee incorporate a tie-bill amendment to MCL 722.722 – False Complaint; Penalty.

Although this committee will likely receive many compassionate testimonial social positions both for and against the aforementioned legislation, there is but one position that demands precedence, especially for married men. It is as follows:

In a modern day world equipped with irrefutable evidence analyses, Michigan's presumption of paternity legitimacy is no longer relevant nor appropriate. "Legal presumptions substitute for facts that cannot be definitively proved or disproved. Presumptions that once provided efficient and effective resolutions of complex social issues have over time become superficial substitutes for the truth."¹

¹ Kaplan, Diane, "Why truth is not a defense in paternity actions", Texas Journal of Women & the Law, 10/01/00

Michigan's presumption of legitimacy holds that a child born during a marriage is the legal issue of both spouses which was the fundamental principle of the English Common Law Lord's Mansfield Rule that could only be rebutted by proof of the husband's impotence, sterility, or non-access to the wife.

But in many Michigan courts today, even if the husband can successfully rebut the presumption on one of these grounds, the court may still exclude DNA evidence of non-paternity under the doctrine of paternity by estoppel. Paternity by estoppel is similar to equitable estoppel..."which bars a person who made a misrepresentation from denying the truth if by doing so he would harm another who relied on the representation to his detriment"¹

Paternity by estoppel is both similar to and different from equitable estoppel. Like equitable estoppel, paternity by estoppel bars a married man from denying the legitimacy of a child born to his marriage if he represented to the child or to the world that he was the child's father; if he developed an emotional relationship with the child" or provided financial support for the child; or if he prevented the child from developing a relationship with his or her true biological father. Unlike equitable estoppel, which penalizes the offending party, paternity by estoppel penalizes an innocent party-the husband-to avoid penalizing another innocent party-the child. The husband has not knowingly or intentionally induced the child's reliance on his misrepresentation of paternity because the husband, too, has been induced to rely on the misrepresentation of paternity perpetrated by his wife. However, paternity by estoppel prevents the husband from rebutting the presumption of legitimacy since once the husband is estopped to deny his parentage, biological evidence of non-paternity becomes irrelevant. The wife, in turn, is barred from testifying that she fraudulently induced one man to assume the parenting obligations of another man, because under paternity by estoppel, the wife's deceit is as irrelevant as the husband's DNA.¹

The term often used to describe the aforementioned events is “paternity fraud” – marital & non-marital. And although a crime is committed, the perpetrators are never held accountable despite Michigan law penalizing making a false paternity complaint [MCL 722.722]. Such were the unfortunate events surrounding my own personal divorce case in 1995.²

With increased state efforts to establish paternities in the hospitals at birth, incidents of paternity fraud have increased significantly. In Michigan in 2010, of the total 113, 438 hospital births, 48,030 were to un-wed mothers or 42.3%. Paternities were established in 62.4% of these un-wed cases resulting in 29,984 men named as fathers as a result.³ However, in Wayne County, there were a total of 22,483 hospital births with 13, 039 to un-wed mothers or 45%. Of these, only 48% paternities were established resulting in 6,127 men voluntarily or unknowingly (default) named as fathers. (Michigan Department of Human Services, 2011) Many of these default cases wind up in the courts as these fathers learn much later that they have a child support order for the child and typically significant child support arrearages, along with the hospital birthing costs, have accumulated since many un-wed mothers are on state assistance programs.

Previous publicly available national data from the American Association of Blood Banks, the governing body for the nation’s genetic testing laboratories, shows a consistent result of approximately 1 in 3 men (29%) presumed to be fathers and tested for paternity are Excluded as the biological fathers of their alleged children. (Lee, 2005) When applied to the Michigan data, this means over 8,700 men may not be the biological fathers presumed to be theirs. In Wayne County, actual statistics compiled during 2010 by a local paternity testing company on behalf of the Wayne County Friend of the Court when testing their default cases, showed that 80% of the presumed fathers were Excluded.⁴

² Oakland Circuit Court 95-490113-DM, 8/21/1996; MCOA 197902, 4/03/1998

³ Michigan Department of Human Services, 2010

⁴ Accurate DNA Testing, LLC, Business Summary Report to the 3rd Circuit Court of Michigan

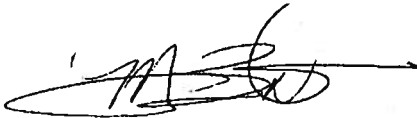
The current version of SB 557 makes no provision for addressing any consequences for the perpetrators of the criminal fraud, the mothers who knowingly deceive others regarding the probabilities of paternity. Current Michigan law [MCL 722.722] provides only misdemeanor penalties for any person making a false complaint as to the identity of the father. **No one has yet been prosecuted under this law in Michigan despite thousands of cases of paternity fraud.** Since misdemeanor penalties carry a time limit of 1 year and the SB 557 carries a time limit of up to three years and the monies involved in a paternity fraud case typically exceed \$1,000, it is thus considered fitting and appropriate to amend MCL 722.722 to a **felony crime with a up to three years statute of limitations for claims** (see enclosed draft).

As stated in the legislative bill analysis for SB 557 (S-2)...” In addition to the individual parties, the State has an interest in ensuring that the actual father of a child is responsible for the payment of child support and medical expenses. This legislation could help families avoid or end government assistance and become self-sufficient. In short, the bills would bring fairness, compassion, and modernity to the law, while ensuring that the child's best interests were the primary consideration. We believe the problem is a very fundamental question of fairness. If DNA analysis can establish paternity could it not also disestablish same? No matter the outcomes, someone will lose. Is it fair and right for a man to be forced unknowingly to pay child support for another man's child? On the other hand, a temporary or permanent loss of child support can adversely affect the health, education and well-being of a child. However, that is a poor argument because even though the child may need financial child support, it doesn't mean it must be provided by a man who is not his father. The actual biological father of each child should be established whenever possible and he alone made responsible for the overall support of his offspring. Otherwise, should we simply grab some man off the street and require him to pay child support for children that aren't his...just because we deem the support so important? We think not along with establishing real consequences for those who intentionally perpetrate paternity fraud.

March 15, 2012

We request your invitation to present oral testimony and will urge this committee to include a tie-bar amendment to MCL 722.722 and vote the complete legislation package out for public consideration by the full body of the people's representatives in the House.

Respectfully,

A handwritten signature in black ink, appearing to read 'Murray Davis', with a long horizontal stroke extending to the right.

Murray Davis
Board President

Cc: Judiciary Committee Members Sen. Steven Bieda

Enclosures: Support Documentation